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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 WILLIAM MEARS, individually and
14 as successor in interest to Michael
Mears; and JOANNA WYSOCKI,
15 individually and as successor in
interest to Michael Mears,

16
17 Plaintiffs,

18 vs.

19 CITY OF LOS ANGELES, a
20 municipality; STEVEN BEUMER, an
21 individual; JOSE PEDROZA, an
individual; JONATHAN GAN, an
22 individual; OFFICER SEFFEL, an
23 individual; OFFICER LEW, an
individual; OFFICER GIST, an
24 individual; SGT. WILLIAMS, an
25 individual, and DOES 8-10 inclusive,

26 Defendants.
27
28

Case No. CV15-08441 JAK (AJWx)
Consol. w/CV 15-09587 JAK (AJWx)
[Honorable Andrew J. Wistrich]

~~[PROPOSED]~~ PROTECTIVE ORDER

*[Stipulation re Protective Order filed
concurrently herewith]*

[PROPOSED] PROTECTIVE ORDER

WHEREAS, Plaintiffs are seeking materials and information that Defendant City of Los Angeles (“City”) claims is confidential, such as select information that may be contained in the personnel files of the police officers, Force Investigation Division materials and information, Internal Affairs materials and information, video recordings, audio recordings and other administrative materials and information currently in the possession of the City and which the City believes need special protection from public disclosure and from use for any purpose other than prosecuting this litigation;

WHEREAS, the City asserts that the confidentiality of the materials and information sought by Plaintiffs is recognized by California and federal law, as evidenced inter alia by California Penal Code section 832.7 and *Kerr v. United States Dist. Ct. for N.D. Cal.*, 511 F.2d 192, 198 (9th Cir. 1975), *aff'd*, 426 U.S. 394 (1976) and *Kelly v. San Jose* 114 FRD 653 (ND CA 1987);

Whereas, Defendants are seeking records from Plaintiffs including and not limited to medical, psychiatric, substance use and abuse, mental health records and military service and medical records to which Plaintiffs may assert privileges, such as privacy and HIPPA;

WHEREAS, the parties contend that absent a protective order, there is a specific risk of unnecessary and undue disclosure by one or more of the many attorneys, secretaries, law clerks, paralegals and expert witnesses involved in this case, as well as the corollary risk of embarrassment, harassment and professional and legal harm on the part of the LAPD officers and plaintiffs or decedent referenced in the materials and information;

WHEREAS, the defendants contend that unfettered disclosure of the materials and information, absent a protective order, would allow the media to share this information with potential jurors in the area, impacting the rights of the City herein to receive a fair trial.

1 WHEREAS Plaintiffs deny the City's contentions above and assert that the
 2 public has a right to access the type of information that Plaintiffs anticipate the
 3 parties will exchange in this case, particularly given that this is a civil rights case
 4 alleging an abuse of police powers against the public interest;

5 WHEREAS the City will not agree to produce any discovery to Plaintiffs
 6 absent a protective order, yet Plaintiffs cannot assess the applicability of
 7 Defendants' assertion of confidentiality absent first having had an opportunity to
 8 review the documents and information at issue; and

9 Whereas Defendants deny that Plaintiffs or decedent have valid claims to
 10 privileges for certain documents or claims of privacy, which Defendants anticipates
 11 that the Plaintiffs will exchange in order to support their claims for monetary
 12 damages.

13 **ORDER ON STIPULATION**

14 1. The parties (hereinafter "Disclosing Party(ies)") may designate as
 15 confidential any personnel files, videos, audio, Force Investigation Division
 16 materials, Internal Affairs materials or any other materials or writings, medical,
 17 mental health and military records that they, in good faith, believe are protected
 18 from disclosure within the meaning of FRCivP 26(g), in that they believe the
 19 material contains confidential, privileged or private information. Such materials
 20 may be classified as subject to this protective order by marking the material, each
 21 document or writing with a single watermark on each page that does not overly
 22 obscure, any written material on the page and that includes words such as
 23 "Confidential," "Confidential Documents," "Confidential Material," "Subject to
 24 Protective Order," or words of a similar effect, and that includes the case name and
 25 case number. Materials and writings so designated, and all privileged information
 26 derived therefrom [hereinafter collectively referred to as "Confidential Material"],
 27 shall be treated in accordance with the terms of this Stipulation.

1 2. Confidential Material may be used by the persons receiving such
2 information [hereinafter “Receiving Party(ies)”] only for the purpose of litigation of
3 this case, and for such other purposes as permitted by law.

4 3. This Stipulation applies not only to the Confidential Material, but also
5 to (1) any information copied or extracted from the Confidential Material; (2) all
6 copies, excerpts, summaries or compilations of Confidential Material; and (3) any
7 testimony, conversations, or presentations by Receiving Parties that might reveal
8 Confidential Material.

9 4. Subject to the further conditions imposed by this Stipulation, the
10 Confidential Material may only be disclosed to the Court and to the following
11 “qualified” persons:

12 (a) Counsel of record for the parties to this civil litigation;

13 (b) Plaintiffs Joanna Wysocki and William Mears and Defendants
14 City of Los Angeles and the named LAPD Officer Defendants;

15 (c) Attorneys, paralegals, law clerks, stenographic, clerical and
16 secretarial personnel who are employees in the offices of counsel referred to in
17 subparagraph (a);

18 (d) Any other parties to the litigation;

19 (e) Expert witnesses consulted and/or retained for this action; and

20 (f) The judge and court personnel, including stenographic reporters
21 and videographers.

22 5. Prior to the disclosure of any Confidential Material to any person
23 described in paragraph 3(a), (c) or (d), counsel for the Receiving Party who seeks to
24 use or disclose such Confidential Material shall first provide a copy of this
25 Stipulation and have the individual to whom the Receiving Party intends to disclose
26 said Confidential Material sign the Nondisclosure Agreement set forth in
27 Attachment “A”, stating that the person has received and read a copy of the
28 Stipulation and understands that s/he is bound by the terms of the Stipulation.

1 6. Unless made on the record in this litigation, counsel making the
2 disclosure to any qualified person described herein shall retain the original executed
3 copy of the Nondisclosure Agreements until thirty (30) days after this litigation has
4 become final, including any appellate review, and monitoring of an injunction.
5 Counsel for the Receiving Party shall maintain all signed Nondisclosure Agreements
6 and shall produce the original signature page upon reasonable written notice from
7 opposing counsel. If an issue arises regarding a purported unauthorized disclosure
8 of Confidential Material, upon noticed motion of contempt filed by the Disclosing
9 Parties, counsel for the Receiving Party may be required to file the signed
10 Nondisclosure Agreements, as well as a list of the disclosed materials, in camera
11 with the Court having jurisdiction of the Stipulation.

12 7. The court reporter, videographer, and audiographer, if any, who record
13 all or part of the depositions in this matter of Defendants City of Los Angeles and
14 Los Angeles Police Department, or any other current or former employee of the Los
15 Angeles Police Department, or of plaintiffs or their representatives, during which
16 “Confidential Material” is disclosed, shall be subject to this Order. In preparing the
17 original deposition videotape, audiotape, or portions thereof, any copies thereof, or
18 portions of copies thereof, all materials and testimony designated as “Confidential
19 Material” shall be segregated from the rest of the deposition. No copies of such
20 segregated “Confidential Material” portions of the materials described above shall
21 be provided to any persons other than those persons identified in paragraph 4.
22 Nothing in this agreement is intended to limit the rights of third parties to obtain
23 such Confidential Material through discovery and subpoena power in other
24 proceedings, subject to a motion for a protective order filed in those proceedings by
25 the party seeking to prevent disclosure of the Confidential Material.

26 8. If any “Confidential Material” or testimony derived from such
27 materials occurs at a deposition, those attending such portions of the depositions
28 shall be bound by this Order and, therefore, shall not disclose to any person or

1 entity, in any manner, including orally, any statements made by Defendants City of
2 Los Angeles and Los Angeles Police Department, or any other current or former
3 employee of the Los Angeles Police Department, or of Plaintiffs or their
4 representatives during the “Confidential” sections of said depositions.

5 9. An inadvertent failure to designate qualified materials or items does
6 not, standing alone, waive the Disclosing Party’s right to secure protection under
7 this Order for such material. Upon being notified of the correction of a designation,
8 the Receiving Party must make reasonable efforts to assure that the material is
9 treated in accordance with this provisions of this Order.

10 10. Upon final termination of this litigation, including any appeal
11 pertaining thereto, all materials still classified as Confidential Material at that time,
12 and all copies thereof, including copies provided to any qualified person in
13 paragraph 3 herein above, shall be returned to the Disclosing Party within thirty (30)
14 days.

15 11. If any Receiving Party who receives Confidential Material is served
16 with a subpoena or other request seeking Confidential Material, s/he or it shall
17 immediately give written notice to counsel for the Disclosing Parties, identifying the
18 Confidential Material sought and the time in which production or other disclosure is
19 required. Such notice shall be given sufficiently in advance of the date for
20 production or other disclosure so that the Disclosing Parties have the opportunity to
21 obtain an order barring production or other disclosure, or to otherwise respond to the
22 subpoena or other request for production or disclosure of Confidential Material.
23 The Receiving Party also shall immediately give notice to the party who caused the
24 subpoena or other request to issue that the material is subject to this Order and
25 include a copy of this Order. In no event should production or disclosure be made
26 without prior written approval by the Disclosing Party’s Counsel unless required by
27 court order arising from a motion to compel production or disclosure of Confidential
28 Material.

1 12. Any pleadings, motions, briefs, declarations, stipulations, exhibits or
2 other written submissions to the Court in this litigation which contain or incorporate
3 Confidential Material shall be filed and maintained in accordance with Local Rule
4 79-5, which governs the filing of materials under seal. Any other pleadings,
5 motions, briefs, declarations, stipulations, exhibits or other written submissions that
6 refer but do not contain or incorporate Confidential Material, shall designate the
7 particular aspects that are confidential so as to enable the Court, in drafting
8 presumptively public orders relating to these filings under seal, to determine
9 whether there is evidence which the Court should attempt not to disclose. If any
10 papers to be filed with the Court contain Confidential Material, the proposed filing
11 shall be accompanied by an application to file the papers or the portion thereof
12 containing the protected information, under seal and that the application shall be
13 directed to the judge to whom the papers are directed. Pending the ruling on the
14 application, the papers or portions thereof subject to the sealing application shall be
15 lodged under seal.

16 13. Any party may request that any motions, applications or other pre-trial
17 proceedings which would entail the disclosure of Confidential Material be heard by
18 the Court in a manner that would preserve the confidential nature of the information,
19 unless having heard opposition from counsel to such a process, the court orders
20 otherwise.

21 14. Nothing herein shall prejudice any party's rights to object to the
22 introduction of any Confidential Material into evidence.

23 15. Any violation of this Order may be punished by any and all appropriate
24 measures including, without limitation, contempt proceedings and/or monetary
25 sanctions.

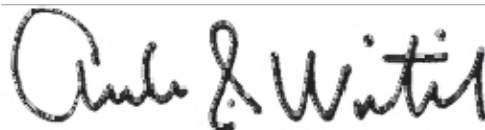
26 16. Any party bound by this Stipulation who contests the confidential
27 nature of materials produced pursuant to this Stipulation may move the Court for an
28 order to have the materials removed from the protective order and to have the

1 materials declared not confidential, or otherwise move to modify the Stipulation as
2 to some or all of the materials.

3 17. Any procedures specified above in this Protective Order are in addition
4 to, and not in lieu of, compliance with the local rules regarding discovery motions.
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6 **IT IS SO ORDERED.**

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8 Dated: October 18, 2016



9 Honorable Andrew J. Wistrich
10 United States District Court
11 Central District of California
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ATTACHMENT “A”
NONDISCLOSURE AGREEMENT

I, _____do solemnly swear that I am fully familiar with the terms of the Protective Order entered in *William Mears, et al., v. City of Los Angeles, et al.*, United States District Court for the Central District of California, Central Division, Case No.CV15-08441 JAK (AJWx), and hereby agree to comply with and be bound by the terms and conditions of said Order. I hereby consent to the jurisdiction of the United States District Court for the Central District of California for the purposes of enforcing this Order.

Dated:_____

Signed:_____

Printed Name: _____